

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2359 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ.STATE CO-OP.LAND DEVE. BANK LTD.

Versus

STATE OF GUJARAT,  
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Appearance:

MR JR NANAVATI for Petitioner

None present for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/10/1999

ORAL JUDGEMENT

1. On 23rd September, 1999, this matter was placed for hearing on the Board but despite of calling the matter in three rounds none was present for the respondents, and it was adjourned to 6th October, 1999. On 6th October, 1999, also the matter was called for hearing in three rounds but as none was present for the respondents and taking into consideration the fact that in the matter an important question does arise for the

consideration, the same was adjourned for today. Today also none of the respondents are present.

2. By this petition, the petitioner Gujarat State Cooperative Land Development Bank Ltd., Ahmedabad is praying for quashing and setting aside the circular dated 17th July, 1985 of the respondent No.1. Further prayer has been made that the respondents be directed to pay the amount of compensation to the petitioner which has been determined in respect of the lands of the agriculturists which were mortgaged with the petitioner-Bank. This petition was admitted on 10th July, 1989.

3. The facts of the case, in brief, are that the petitioner-Bank is a registered Cooperative Bank under the provisions of the Gujarat Cooperative Societies Act, 1961. The petitioner advances loans to the agriculturists for agricultural purposes. It has various branches in the State. While granting loans to the agriculturists for agricultural purposes, the petitioner insists upon the execution of mortgage in respect of the lands owned and possessed by these agriculturists. The advance is given on the mortgage executed by the agriculturists. The petitioner submits that the lands which are mortgaged with the petitioner by the agriculturists are sometimes acquired by the State Government either wholly or partly but the claim of the petitioner in respect of mortgage is not taken into account by the respondent No.1 and its officers and the compensation amount is paid to the agriculturists in complete disregard of the petitioner's right and interest in respect of the mortgaged lands. The respondent No.1 has issued a circular dated 17th July, 1985 in respect of the recovery of dues of the petitioner bank from the amount of compensation payable to the mortgagors of the petitioner-Bank. Under this circular, the respondent No.1 has drawn attention of the concerned officers about the provisions as contained in sub-section (1) of section 73 of the Transfer of Property Act and instructed that when the portion of land is acquired which is mortgaged to the petitioner bank then the proportionate amount of compensation should be paid to the petitioner and remaining amount to the owners. This circular is under challenge in this case.

4. The petitioner has given out reference of the case of agriculturists, viz. Khodabhai Jinkabhai Baria and Ambalal Govindbhai of Vedpur. Their lands were acquired by the respondent No.2 under the Land Acquisition Act. Those lands were mortgaged to the petitioner-Bank by those persons and the petitionerBank

was entitled to notice under section 9 of the Land Acquisition Act but the respondent without giving any notice to the petitioner has paid compensation of the acquisition of land to these agriculturists. The petitioner under its letter dated 18th October, 1985 informed to the respondent No.2 that it is entitled for amount of compensation which is payable on acquisition of the lands of the agriculturists as the same are mortgaged by them to it. This letter was followed by the letter dated 9th January, 1986 of the petitioner to the respondent NO.2. Another letter has been written by the petitioner to the respondent NO.2 in this matter on 2nd April, 1986 and complaint has been made that the amount of compensation has been paid to the agriculturists without notice and information to the petitioner who is entitled for notice under section 9 of the Land Acquisition Act. Time and again the petitioner requested the respondent No.2 to inform the petitioner about the same and issue notice to the petitioner under subsection-2 of section 9 of the ACT, but the respondent No.2 has ignored the same and not paid the amount of compensation due and payable to the petitioner.

5. Learned counsel for the petitioner contended that the lands are got mortgaged to secure repayment of loan advances by the petitioner. This is a mortgage with the petitioner, the mortgagors are left with only a right of redemption. So all right, title and interest in the lands except the right of redemption vests in the mortgagee and on acquisition of the said lands or part thereof whatever amount of compensation is to be paid to the owner of the lands has to be paid to the petitioner. In case the amount of loan is less than the amount of compensation received there may be some semblance of justification to pay the balance of amount to the agriculturists and not proportionate amount to the petitioner. It has next been contended that where the land which is sought to be acquired by the respondent No.2 is under mortgage of the petitioner, the petitioner should have been given notice under section 9 of the Land Acquisition Act otherwise in such matters the petitioner will not come to know about the acquisition of land and the agriculturists will get the full amount of compensation which will result in committing fraud with the bank. In all the matters, it is also not possible to keep watch by the petitioner. If notice is given to the petitioner then it can make statement before the officer concerned and the Bank's money which is a public money may not be lost. It is further submitted that as per the provisions as contained in subsection 2 of section 73 of the Transfer of Property Act, the petitioner is entitled

for entire amount of compensation which was determined by the respondent NO.2 for acquisition of the land of the agriculturists which are mortgaged with the petitioner. Attacking on the circular, lastly the learned counsel for the petitioner contended that when the land has been mortgaged and even the part of the land is acquired there cannot be any justification to allow the petitioner only to take proportionate amount of compensation, it is contrary to provisions of section 73 of the T.P. Act.

6. Nobody is present on behalf of the respondents to make submissions in this case. Not only this but even the respondents have not cared to file reply to the special civil application and this court is not having any assistance of the respondents in the matter.

I have given my thoughtful consideration to the submissions of the learned counsel for the petitioner.

7. The circular dated 17th July, 1985 is there on the record of this special civil application and therefrom I find that the respondent No.1 has given direction to its officers that the proportionate compensation can only be given to the mortgagee, here the petitioner. It is only a proportionate amount has to be paid out of the amount of compensation determined by the Land Acquisition Officer under the provisions of the Land Acquisition Act for acquisition of land of the agriculturists which were mortgaged with the petitioner. So in case where 1/4 of the total land mortgaged with the petitioner by the agriculturist has been acquired then 1/4 of the compensation determined by the respondent No.2 for acquisition of the land can only be paid to the petitioner.

8. Section 73 of the Transfer of Property Act provides that where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 or any other enactment for the time being in force providing for compulsory acquisition of the immovable property, the mortgagee shall be entitled to claim payment of mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation. As stated earlier, except the right of redemption of the mortgaged land, the right, title and interest therein vests in the mortgagee. In case where the loan has been taken by the agriculturists for agricultural purposes and in later point of time, the land in question is acquired as a whole or part thereof, the bank has first and foremost claim to the total exclusion of the claim of the mortgagor on the amount of

compensation. However, this claim shall be to the extent of outstanding amount of loan and in case the outstanding amount of loan exceeds the amount of compensation to be found payable on acquisition of these lands then the bank will take whole of the amount but where it is less than the amount of compensation determined, the balance will go to the agriculturists. Section 73 of the T.P. Act is very clear which has not been taken care of by the respondent No.1 while making circular aforesaid. It is the right of the mortgagee and in fact a legal entitlement to claim payment of mortgaged money in whole or in part out of the amount due to the mortgagor as compensation. This circular is in total contravention of provisions of section 73 of the T.P. Act. Otherwise also, I fail to see what purpose will be served in case this circular is allowed to stand. The money has been given by the Bank for agricultural purposes and in case the land itself has been acquired the bank's money has to be recovered from the compensation otherwise ultimately it will be a loss to the nation. The people's money which is to be given for agricultural purposes to the agriculturists as loan will be taken by the agriculturists and as the land has been acquired or it is fortuitous circumstance that the land has been acquired, the land will go in the acquisition and substantial portion of the compensation will also go in the pocket of the mortgagor and no property will be available with the agriculturists wherefrom the petitioner could have recovered the amount of loan. The proportionate amount of the compensation if only given to the petitioner then the other agriculturists will not be benefitted by the scheme of advancing of loan to them for agricultural purposes. It is true that the land will go but when they have taken the money of the bank it is also legal obligation on the agriculturists to pay that amount. Leaving apart this, if ultimately the loan amount is not paid, the petitioner has legal right to recover this amount by foreclosure of the mortgage land. That absolute right is with the petitioner and in case where the land has been acquired by this circular how such a legal right of the petitioner can be deprived of. The provisions of this circular go contrary to the legal rights which are accrued to the petitioner by mortgage of land to it by the agriculturists. This circular is detrimental to the rights of thousands of agriculturists as for nonpayment of the amount of loan ultimately the bank's money will go and it will not be available for disbursement to other agriculturists and secondly it is a loss of public money. Section 73 of the T.P. Act is a specific provision and the circular which has been made contrary to that provision otherwise cannot be allowed to

stand. No explanation is forthcoming from the respondents for this circular. The reply has not been filed nor anybody is present on behalf of the respondents to make oral submissions also which goes to show that in substance they are agreeable that the circular has no legal sanctity or legality or validity.

9. As a result of the aforesaid discussion, this petition succeeds and the same is allowed and the circular dated 17th July, 1985 of the respondent No.1 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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